Method of Taking Depositions

(f) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Authority.

Foreign Depositions

(g) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer or other person commissioned by the Authority, or agreed upon by the parties by stipulation in writing to be filed with the Authority, or may be taken under letters rogatory issued by a court of competent jurisdiction at the request of the Authority.

Fees

(h) Witnesses whose depositions are taken as authorized in this Act, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States: *Provided*, That with respect to commissions or letters rogatory issued at the initiative of the Authority, executed in foreign countries, the Authority shall pay such fees, charges, or expenses incidental thereto as may be found necessary, in accordance with regulations on the subject to be prescribed by the Authority.

Compelling Testimony

(i) No person shall be excused from attending and testifying, or from producing books, papers, or documents before the Authority, or in obedience to the subpena of the Authority, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

ORDERS, NOTICES, AND SERVICE

Effective Date of Orders; Emergency Orders

SEC. 1005 [*52 Stat. 1023, 49 U. S. C. 645*] (a) Except as otherwise provided in this Act, all orders, rules, and regulations of the Authority shall take effect within such reasonable time as the Authority may

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prescribe, and shall continue in force until its further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation: *Provided*, That whenever the Authority is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, the Authority is authorized, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other form of pleading by the interested person or persons, and with or without notice, hearing, or the making or filing of a report, to make such just and reasonable orders, rules, or regulations, as may be essential in the interest of safety in air commerce to meet such emergency: *Provided further*, That the Authority shall immediately initiate proceedings relating to the matters embraced in any such order, rule, or regulation, and shall, insofar as practicable, give preference to such proceedings over all others under this Act.

Designation of Agent for Service

(b) It shall be the duty of every air carrier and foreign air carrier within sixty days after the effective date of this section to designate in writing an agent upon whom service of all notices and process and all orders, decisions, and requirements of the Authority may be made for and on behalf of said carrier, and to file such designation in the office of the secretary of the Authority, which designation may from time to time be changed by like writing similarly filed. Service of all notices and process and orders, decisions, and requirements of the Authority may be made upon such carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Authority, or of any order, decision, or requirement of the Authority, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Authority.

Other Methods of Service

(c) Service of notices, processes, orders, rules, and regulations upon any person may be made by personal service, or upon an agent designated in writing for the purpose, or by registered mail addressed to such person or agent. Whenever service is made by registered mail, the date of mailing shall be considered as the time when service is made.

Suspension or Modification of Order

(d) Except as otherwise provided in this Act, the Authority is empowered to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

Compliance With Order Required

(e) It shall be the duty of every person subject to this Act, and its agents and employees, to observe and comply with any order, rule, regulation, or certificate issued by the Authority under this Act affecting such person so long as the same shall remain in effect.

Form and Service of Orders

(f) Every order of the Authority shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected by such order.

JUDICIAL REVIEW OF AUTHORITY'S ORDERS

Orders of Authority Subject to Review

SEC. 1006 [*52 Stat. 1024, 49 U. S. C. 646*] (a) Any order, affirmative or negative, issued by the Authority under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

Venue

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

Notice of Authority; Filing of Transcript

(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Authority by the clerk of the court; and the Authority shall thereupon certify and file in the court a transcript of the record, if any, upon which the order complained of was entered.

Power of Court

(d) Upon transmittal of the petition to the Authority, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Authority. Upon good cause shown, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate: *Provided*, That no interlocutory relief may be granted except upon at least five days' notice to the Authority.

Findings of Fact by Authority Conclusive

(e) The findings of facts by the Authority, if supported by substantial evidence, shall be conclusive. No objection to an order of the Authority shall be considered by the court unless such objection shall have been urged before the Authority or, if it was not so urged, unless there were reasonable grounds for failure to do so.

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Certification or Certiorari

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Authority shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in sections 239 and 240 of the Judicial Code.

JUDICIAL ENFORCEMENT

Jurisdiction of Court

SEC. 1007 [*52 Stat. 1025, 49 U. S. C. 647*] (a) If any person violates any provision of this Act, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit issued under this Act, the Authority, its duly authorized agent, or, in the case of a violation of section 401 (a) of this Act, any party in interest, may apply to the district court of the United States, for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this Act, or of such rule, regulation, requirement, order, term, condition, or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives, from further violation of such provision of this Act or of such rule, regulation, requirement, order, term, condition, or limitation, and enjoining upon them obedience thereto.

Application for Enforcement

(b) Upon the request of the Authority, it shall be the duty of any district attorney of the United States to whom the Authority may apply to institute in the proper court and to prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of this Act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

PARTICIPATION BY AUTHORITY IN COURT PROCEEDINGS

SEC. 1008 [*52 Stat. 1025, 49 U. S. C. 648*] Upon request of the Attorney General, the Authority shall have the right to participate in any proceeding in court under the provisions of this Act.

JOINDER OF PARTIES

SEC. 1009 [*52 Stat. 1025, 49 U. S. C. 649*] In any proceeding for the enforcement of the provisions of this Act, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, whether such proceedings be instituted before the Authority or be begun originally in any court of the United States, it shall be lawful to include as parties, or to permit the intervention of, all persons interested in or affected by the matter

under consideration; and inquiries, investigations, orders, and decrees may be made with reference to all such parties in the same manner, to the same extent, and subject to the same provisions of law as they may be made with respect to the persons primarily concerned.

TITLE XI—MISCELLANEOUS

HAZARDS TO AIR COMMERCE [12]

SEC. 1101 [*52 Stat. 1026, 49 U. S. C. 671*] The Authority shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Authority, of the construction or alteration, or of the proposed construction or alteration, of any structure along or near the civil airways where notice will promote safety in air commerce.

INTERNATIONAL AGREEMENTS

SEC. 1102 [*52 Stat. 1026, 49 U. S. C. 672*] In exercising and performing its powers and duties under this Act, the Authority shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, shall take into consideration any applicable laws and requirements of foreign countries and shall not, in exercising and performing its powers and duties with respect to certificates of convenience and necessity, restrict compliance by any air carrier with any obligation, duty, or liability imposed by any foreign country: *Provided*, That this section shall not apply to any obligation, duty, or liability arising out of a contract or other agreement, heretofore or hereafter entered into between an air carrier, or any officer or representative thereof, and any foreign country, if such contract or agreement is disapproved by the Authority as being contrary to the public interest.

NATURE AND USE OF DOCUMENTS FILED

SEC. 1103 [*52 Stat. 1026, 49 U. S. C. 673*] The copies of tariffs, and of all contracts, agreements, understandings, and arrangements filed with the Authority as herein provided, and the statistics, tables, and figures contained in the annual or other reports of air carriers and other persons made to the Authority as required under the provisions of this Act shall be preserved as public records (except as otherwise provided in this Act) in the custody of the secretary of the Authority, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Authority and in all judicial proceedings; and copies of, and extracts from, any of such tariffs, contracts, agreements, understandings, arrangements, or reports, certified by the secretary of the Authority, under the seal of the Authority, shall be received in evidence with like effect as the originals.

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[12] Section 303 (q) of the Federal Communications Act of 1934, 48 Stat. 1082, 47 U. S. C. 303 (q) provides that "Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall— * * * have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation."

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WITHHOLDING OF INFORMATION

SEC. 1104 [*52 Stat. 1026, 49 U. S. C. 674*] Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this Act or of information obtained by the Authority, the Administrator, or the Air Safety Board pursuant to the provisions of this Act, stating the grounds for such objection. Whenever such objection is made, the Authority, or the Air Safety Board if the information was obtained by it, shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Authority is authorized to withhold publication of records containing secret information affecting national defense.

COOPERATION WITH GOVERNMENT AGENCIES

SEC. 1105 [*52 Stat. 1027, 49 U. S. C. 675*] The Authority, the Administrator, and the Air Safety Board may avail themselves of the assistance of the National Advisory Committee for Aeronautics and any research or technical agency of the United States on matters relating to aircraft fuel and oil and to the design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each such agency is authorized to conduct such scientific and technical researches, investigations, and tests as may be necessary to aid the Authority, the Administrator, and the Air Safety Board in the exercise and performance of their powers and duties. Nothing contained in this Act shall be construed to authorize the duplication of the laboratory research activities of any existing governmental agency.

REMEDIES NOT EXCLUSIVE

SEC. 1106 [*52 Stat. 1027, 49 U. S. C. 676*] Nothing contained in this Act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

AMENDMENTS AND REPEALS

SEC. 1107 [*52 Stat. 1027, 49 U. S. C. 677*] (a) Section 3964 of the Revised Statutes is hereby amended by adding "and all air routes", after the words "or parts of railroads".

(b) The Act of May 24, 1928, as amended (45 Stat. 728), is further amended by striking out the words "Secretary of Commerce" wherever they appear and inserting in lieu thereof the words "Civil Aeronautics Authority".

(c) The Independent Offices Appropriation Act, 1934, as amended (48 Stat. 283), is further amended by striking out in section 6 thereof the words "any air mail contract or".

(d) The Act approved February 21, 1925 (43 Stat. 960), as amended by the Act approved August 24, 1935 (49 Stat. 744), and the Act approved August 29, 1937 (50 Stat. 725), is further amended by striking out the words "; and he is authorized, in his discretion, to con-

tract, after advertisement in accordance with law, for the carriage of all classes of mail to, from, or within the Territory of Alaska, by airplane, payment therefor to be made from the appropriation for star-route service in Alaska."

(e) The ninth paragraph of the Act approved March 3, 1915 (38 Stat. 930), as amended by the Act of March 2, 1929 (45 Stat. 1451; U. S. C., 1934 ed., title 50, sec. 151), is further amended by inserting after the words "naval aeronautics;" in that paragraph the following: "two members from the Civil Aeronautics Authority;", by striking out the word "eight" in that paragraph and inserting in lieu thereof the word "six", and by striking out the colon after the words "allied sciences" and inserting in lieu thereof a period and the following: "The members of the National Advisory Committee for Aeronautics, not representing governmental agencies, in office on the date of enactment of the Civil Aeronautics Act of 1938, shall continue to serve as members of the Committee until the effective date of section 1107 of the Civil Aeronautics Act of 1938. Upon the expiration of their terms of office, the President is authorized to appoint successors to six of such members for terms of office to expire, as designated by the President at the time of appointment, two at the end of one year, two at the end of three years, and two at the end of five years from December 1, 1938. Successors to those first appointed shall be appointed by the President for terms of five years from the date of the expiration of the terms of the members whom they succeed, except that any such successor, appointed to fill a vacancy occurring prior to the expiration of a term, shall be appointed only for the unexpired term of the member whom he succeeds:".

(f) Section 5 (a) of the Federal Trade Commission Act, approved September 26, 1914, as amended (38 Stat. 719; U. S. C., 1934 ed., title 15, sec. 41), is further amended by inserting before the words "and persons" the following: "air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938,".

(g) Section 11 of the Act of October 15, 1914, as amended (38 Stat. 734; U. S. C., 1934 ed., title 15, sec. 21), is amended by inserting after the word "energy;" the following: "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938;" and by inserting after the word "commission" wherever it appears in that section a comma and the word "authority,".

(h) The Department of Commerce Appropriation Act, 1939, is amended by striking out the words "Secretary of Commerce", wherever they appear in the second paragraph under the heading "Bureau of Air Commerce", and inserting in lieu thereof the words "Administrator in the Civil Aeronautics Authority, with the approval of the Civil Aeronautics Authority".

(i) The Air Commerce Act of 1926, as amended, is further amended—

(1) By striking out the words "Secretary of Commerce" wherever they appear (except in section 7 and section 11 (a), (b), and (c)) and inserting in lieu thereof in section 6 (c) and section 10 the words "Civil Aeronautics Authority" and in sections 5 (f), 9 (j), and 11 (e) the words "Administrator in the Civil Aeronautics Authority".

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(2) By inserting after the word "Act" in the first line of subsection (f) of section 5 the words "or the Civil Aeronautics Act of 1938".

(3) By striking out the first sentence of section 6 and inserting in lieu thereof the following: "The United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the air space above the United States, including the air space above all inland waters and the air space above those portions of the adjacent marginal high seas, bays, and lakes, over which by international law or treaty or convention the United States exercises national jurisdiction."

(4) By striking out so much of subsection (b) of section 6 as reads "; and if so authorized, such aircraft and airmen serving in connection therewith, shall be subject to the requirements of section 3, unless exempt under subdivision (c) of this section".

(5) By striking out so much of subsection (c) of section 6 as reads ", and may by regulation exempt such aircraft, and/or airmen serving in connection therewith, from the requirements of section 3, other than the air traffic rules; but no foreign aircraft shall engage in interstate or intrastate air commerce.", and by inserting in lieu thereof a period and the following: "No foreign aircraft shall engage in air commerce otherwise than between any State, Territory, or possession of the United States (including the Philippine Islands) or the District of Columbia and a foreign country".

(6) By striking out "51 per centum" in subsection (a) of section 9 thereof and inserting in lieu thereof "75 per centum".

(7) By inserting after the word "Act" in subsection (f) of section 9 the words "or the Civil Aeronautics Act of 1938".

(8) By striking out so much of section 10 as reads "under section three".

(9) By striking out so much of subsection (b) of section 11 as reads "any provision of subdivision (a) of this section or any entry or clearance regulation made under section 7 (b)" and inserting in lieu thereof "any entry or clearance regulation made under section 7 (c)".

(j) Section 203 (b) of the Motor Carrier Act, 1935, is amended by inserting after the words "(7) motor vehicles used exclusively in the distribution of newspapers" a semicolon and the following: "or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft".

(k) Sections 2 (b) (2) and (3), 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, and so much of section 8 as reads "; and any person not ineligible under the terms of this Act who qualified under the other requirements of this Act, shall be eligible to contract for carrying air mail, notwithstanding the provisions of section 3950 of the Revised Statutes (Act of June 8, 1872)", of the Act of June 12, 1934, as amended (48 Stat. 1933); the joint resolution of June 26, 1934 (48 Stat. 1243); the Act of March 8, 1928 (45 Stat. 248), as amended; sections 2, 3, and 3a, subsections (a), (b), (e), and (g) of section 5, the second sentence of section 8, and paragraphs (2), (3), (4), and (5) of subsection (a) of section 11 of the Air Commerce Act of 1926, as amended (44 Stat. 568; U. S. C., 1934 ed., title 49, sec. 177); and all other Acts or parts of Acts inconsistent with any provision of this Act are hereby repealed.

Effectiveness of Existing Orders, Regulations, and So Forth

SEC. 1108 [*52 Stat. 1029, 49 U. S. C. 678*] (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Department of Commerce, or the Postmaster General, or any court of competent jurisdiction, under any provision of law repealed or amended by this Act, or in the exercise of duties, powers, or functions transferred to the Authority by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, set aside, or repealed by the Authority, or by any court of competent jurisdiction, or by operation of law.

Pending Administrative Proceedings

(b) The provisions of this Act shall not affect any proceedings pending before the Secretary of Commerce or the Postmaster General, or proceedings pending before the Interstate Commerce Commission for the determination of rates for the transportation of air mail by aircraft, on the date of the enactment of this Act; but any such proceedings shall be continued, orders therein issued, appeals therefrom taken, and payments made by the Postmaster General pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Authority or by operation of law: *Provided*, That the rates determined by the Interstate Commerce Commission shall be determined without regard to that portion of section 6 (e) of the Air Mail Act approved June 12, 1934, which provides as follows: "which, in connection with the rates fixed by it for all other routes, shall be designed to keep the aggregate cost of the transportation of air mail on and after July 1, 1938, within the limits of the anticipated postal revenue therefrom".

Pending Judicial Proceedings

(c) The provisions of this Act shall not affect suits commenced prior to the date of the organization [13] of the Authority; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from such agency or officer to the Authority under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Authority.

[13] So in original.

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Records Transferred to Authority

(d) All records transferred to the Authority under this Act shall be available for use by the Authority to the same extent as if such records were originally records of the Authority.

SEPARABILITY

SEC. 1109 [*52 Stat. 1030, 49 U. S. C. 679*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 1110 [*52 Stat. 1030, 49 U. S. C. 680*] The provisions of this Act, except this section, title II, and section 408, shall become effective sixty days after enactment: *Provided*, That the Authority shall, if it finds such action necessary or desirable in the public interest, by general or special order, postpone the effective date of any provision of this Act, except this section, title II, and section 408, to such time as the Authority shall prescribe, but not beyond the one hundred and eightieth day following the enactment of this Act.

Approved June 23, 1938.

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MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

TRANSMITTING REORGANIZATION PLAN NO. III[1]

To the Congress of the United States:

When I submitted Reorganization Plans I and II at the last regular session of Congress, I indicated that certain reorganizations of an intradepartmental character were necessary but that detailed study would be required for the preparation of specific plans. Since that time the heads of the executive departments and my own office have continued to study the internal organization of the several agencies of the Government. I have considered recommendations made to me as a result of these studies and have found it possible to make a number of needed improvements of organization by administrative action. In other instances, I can effect the necessary changes only under the procedure set up in the Reorganization Act of 1939.

I am transmitting herewith Reorganization Plan III, which I have prepared in accordance with the provisions of section 4 of the Reorganization Act of 1939 (Public, No. 19, 76th Cong., 1st sess.), approved April 3, 1939; and I declare that with respect to each reorganization made in this plan, I have found that such reorganization is necessary to accomplish one or more of the purposes of section 1 (a) of the act:

1. To reduce expenditures;
2. To increase efficiency;
3. To consolidate agencies according to major purposes;
4. To reduce the number of agencies by consolidating those having similar functions and by abolishing such as may not be necessary; and
5. To eliminate overlapping and duplication of effort.

TREASURY DEPARTMENT

I am proposing two intradepartmental reorganizations relating to the Treasury Department.

The first reorganization consolidates in a Fiscal Service, under the direction of a permanent Fiscal Assistant Secretary, those functions of the Treasury Department pertaining to financing and fiscal activities. This Fiscal Service will bring together the Office of the Treasurer of the United States, the Office of Commissioner of Accounts and Deposits, and the Public Debt Service, including their various subdivisions and certain other related functions.

Some adjustments are made in the assignment of functions of the units which will comprise the Fiscal Service, and certain changes are made in titles. The net effect of these adjustments is to establish within the Fiscal Service the Office of Fiscal Assistant Secretary, the Office of the Treasurer of the United States, and a Bureau of Accounts under a Commissioner of Accounts, and a Bureau of Public Debt

[1] Printed as H. Doc. No. 681, 76th Cong., 3d sess.

under the Commissioner of Public Debt. In addition to responsibility for the administration of these four segments of the Department's operations, the Fiscal Assistant Secretary is vested with the financing functions of the Under Secretary of the Treasury and of the Assistant Secretaries.

The functions brought together in the Fiscal Service are all closely interrelated and are essential parts of the general functions of financing and fiscal control. The internal organization of the Fiscal Service conforms to accepted principles of financial management and provides the framework for adequate internal controls. At the same time, under the proposed plan these functions can be coordinated more effectively, duplications eliminated, and a more efficient service provided. To assure continued effective management of this highly important and technical phase of the Treasury functions, I am placing the Fiscal Service under the supervision of a career official. The plan, therefore, provides that the Fiscal Assistant Secretary will be appointed by the Secretary of the Treasury in accordance with civil-service laws and will perform his duties under the general direction of the Secretary. This is in accord with the policy of this administration of bringing higher administrative positions within the career service. The creation of the office of Fiscal Assistant Secretary will not increase the number of Assistant Secretaries in the Treasury Department since the plan expressly provides for the abolition of one of the three existing offices of Assistant Secretary.

The second reorganization affecting the Treasury Department vests in the Secretary of the Treasury full authority for the administration of the Federal Alcohol Administrative Act. At present the Federal Alcohol Administration occupies an anomalous position. It is legally a part of the Treasury Department, but actually it is clothed with almost complete independence under existing statutory provisions. Under certain conditions the Administration would by law become an independent agency, whereas the interests of improved management require its integration with allied activities in the Treasury Department.

I propose, therefore, that the functions of the Federal Alcohol Administration be correlated with the activities of the Bureau of Internal Revenue, particularly its Alcohol Tax Unit. The Bureau is already performing a large part of the field enforcement work of the Administration and could readily take over complete responsibility for its work. The Bureau is daily making, for other purposes, a majority of the contacts with units of the liquor industry which the Federal Alcohol Administration should but cannot make without the establishment of a large and duplicating field force. Under the provisions of this plan, it will be possible more effectively to utilize the far-flung organization of the Treasury Department, including its many laboratories, in discharging the functions of the Federal Alcohol Administration. Thus, I find the proposed consolidation will remedy deficiencies in organization structure as well as afford a more effective service at materially reduced costs.

DEPARTMENT OF THE INTERIOR

Reorganization Plan II transferred the Bureau of Fisheries of the Department of Commerce and the Bureau of Biological Survey of

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the Department of Agriculture to the Department of the Interior and thus concentrated in one department the two bureaus responsible for the conservation and utilization of the wildlife resources of the Nation. On the basis of experience gained since this transfer, I find it necessary and desirable to consolidate these units into a single bureau to be known as the Fish and Wildlife Service.

The Bureau of Biological Survey administers Federal laws relating to birds, land mammals, and amphibians whereas the Bureau of Fisheris deals with fishes, marine mammals, and other aquatic animals. The natural areas of operation of these two bureaus frequently coincide, and their activities are interrelated and similar in character. Consolidation will eliminate duplication of work, facilitate coordination of programs, and improve service to the public.

Another provision relating to the Department of the Interior is the abolition of the statutory office of Recorder of the General Land Office. This office is a relic of the quill-and-sand-box period in the transcription of land records. Its duties can readily be absorbed by the regular civil-service personel of the Land Office.

DEPARTMENT OF AGRICULTURE

I propose to consolidate the Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration and the Federal Surplus Commodities Corporation into a single agency to be known as the Surplus Marketing Administration. This consolidation will facilitate the work of the Department of Agriculture relating to the formulation and administration of marketing agreements and the disposition of agricultural surpluses.

Because the two programs require unified planning and direction, the Secretary of Agriculture has found it desirable to designate the same person as the head of both. In one capacity he reports directly to the Secretary of Agriculture while in the other he is responsible by law to the Administrator of the Agricultural Adjustment Administration. Consolidation of the two units will assure unified management, eliminate confusion in administration, and make for more efficient operation. Furthermore, this reorganization will remove from the Agricultural Adjustment Administration the legal responsibility for functions which differ administratively from its major operations.

DEPARTMENT OF LABOR

I propose to abolish the offices of commissioner of immigration and the offices of district commissioner of immigration and naturalization. The former have been vacant since 1933; the latter impose an unnecessary level of supervision above that of district director of immigration and naturalization in certain of our ports and should be eliminated in the interests of economy and sound administration.

CIVIL AERONAUTICS AUTHORITY

I propose to clarify the relations of the Administrator of the Civil Aeronautics Authority and the five-member Board of the Civil Aeronautics Authority. The Administrator is made the chief administrative officer of the Authority with respect to all functions other than those relating to economic regulation and certain other activities pri-

marily of a rule-making and adjudicative character which are entrusted to the Board. This will eliminate the confusion of responsibilities existing under the Civil Aeronautics Act and provide a more clear-cut and effective plan or organization for the agency.

IMPROVEMENT AND SAVINGS

The principal advantage of the reorganizations proposed in this plan will be increased effectiveness of operation of the agencies concerned. In addition to improved service, some economies may be expected. I estimate that immediate annual savings in administrative expense of approximately $150,000 will result. This comparatively small amount in no way measures the worth of the proposals. In fact, if they resulted in no administrative savings at all, I should still consider them worthwhile in view of the increased effectiveness of administration that will result.

NEED FOR CONTINUOUS STUDY

The management problems of a department or agency are complex and dynamic and require much detailed analysis before findings can be made. These problems cannot be resolved by any one reorganization plan, nor at one time; their study must be a continuing process if our departmental machinery is to keep pace with the changing requirements placed on the Government. Accordingly, in conformity with the Budget and Accounting Act, I have instructed the Director of the Bureau of the Budget to continue studies in collaboration with the several departments and agencies, looking to further improvements in the Government's administrative structure.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
April 2, 1940.

REORGANIZATION PLAN NO. III [2]

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 2, 1940, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939 [3]

DEPARTMENT OF THE TREASURY

SECTION 1. *Fiscal Service of the Treasury Department.*—(a) *Establishment of Fiscal Service.*—(1) The office of the Commissioner of Accounts and Deposits, the Division of Bookkeeping and Warrants, the Division of Disbursement, the Division of Deposits, the Section of Surety Bonds, the office of the Commissioner of the Public Debt, the Division of Loans and Currency, the office of the Register of the Treasury, the Division of Public Debt Accounts and Audit, the Division of Savings Bonds, the Division of Paper Custody, and the Office of the Treasurer of the United States and their functions are consolidated into one agency of the Treasury Department to be known as the Fiscal Service, at the head of which there shall be an officer who shall be known as the Fiscal Assistant Secretary.

[2] Public Res. No. 75, approved June 4, 1940, provides that Reorganization Plans Nos. III and IV shall take effect on June 30, 1940, notwithstanding the provisions of the Reorganization Act of 1939.
[3] 53 Stat. 561, 5 U. S. C., 133 et seq.

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(2) The Fiscal Service shall consist of the Office of the Fiscal Assistant Secretary, the Office of the Treasurer of the United States, a Bureau of Accounts, and a Bureau of the Public Debt. Except as is otherwise specifically provided herein, the Secretary of the Treasury may establish such divisions and other constituent units within these agencies as he deems necessary.

(3) The Division of Bookkeeping and Warrants and its functions are transferred to the Bureau of Accounts, at the head of which shall be the Commissioner of Accounts and Deposits, who shall hereafter be known as the Commissioner of Accounts.

(4) The office of the Commissioner of the Public Debt, the Division of Loans and Currency, the office of the Register of the Treasury, the Division of Public Debt Accounts and Audit, the Division of Savings Bonds, and the Division of Paper Custody and their functions are consolidated into and shall be administered as the Bureau of the Public Debt, at the head of which shall be the Commissioner of the Public Debt.

(5) The functions of the Office of the Treasurer of the United States shall be administered by the Treasurer of the United States.

(6) Such functions as are consolidated into or transferred to the Fiscal Service and which are not allocated herein to particular agencies or offices of the Fiscal Service shall be administered through such units of the Service as may be designated by the Fiscal Assistant Secretary with the approval of the Secretary of the Treasury.

(7) The Fiscal Assistant Secretary shall be appointed by the Secretary of the Treasury in accordance with the civil-service laws and shall receive a salary at the rate of $10,000 per annum. He shall, under the direction of the Secretary of the Treasury, supervise the administration of and coordinate the functions and activities consolidated into or transferred to the Fiscal Service and shall perform such other duties as the Secretary of the Treasury shall direct. In the absence or disability of the Fiscal Assistant Secretary or in the event of a vacancy in that office, the Secretary of the Treasury may designate any other officer of the Treasury Department to act as Fiscal Assistant Secretary.

(b) *Transfer of certain functions to Fiscal Service.*—All functions vested in the Under Secretary of the Treasury and any Assistant Secretary of the Treasury pertaining to (1) the administration of financing operations; (2) the supervision of the administration of the functions and activities of the Office of Commissioner of Accounts and Deposits, the Office of the Commissioner of the Public Debt, and the Office of the Treasurer of the United States; and (3) supervision of the administration of the accounting functions and activities in the Treasury Department and all its bureaus, divisions, and offices, are hereby transferred to and consolidated in the Fiscal Service, to be exercised by the Fiscal Assistant Secretary under the direction of the Secretary of the Treasury: *Provided*, That the functions included in item (3) shall be exercised through the Commissioner of Accounts.

(c) *Transfer of functions relating to accounting.*—All functions vested in any other officer or employee of the Treasury Department, except those excluded by section 3 (b) of the Reorganization Act of 1939, of authorizing the installation, maintenance, revision, and elimination of accounting records, reports, and procedures, are hereby

transferred to and consolidated under the Fiscal Assistant Secretary, to be exercised by him through the Commissioner of Accounts.

(d) *Abolition of an office of Assistant Secretary of the Treasury.*—That office of Assistant Secretary of the Treasury which is now vacant is hereby abolished; and all the functions, rights, powers, and duties of such abolished office are hereby transferred to and vested in the Fiscal Assistant Secretary, to be exercised by him under the direction of the Secretary of the Treasury.

SEC. 2. *Federal Alcohol Administration.*—The Federal Alcohol Administration, the offices of the members thereof, and the office of the Administrator are abolished, and their functions shall be administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue in the Department of the Treasury.

DEPARTMENT OF THE INTERIOR

SEC. 3. *Fish and Wildlife Service.*—The Bureau of Fisheries and the Bureau of Biological Survey in the Department of the Interior with their respective functions are consolidated into one agency in the Department of the Interior to be known as the Fish and Wildlife Service. The functions of the consolidated agency shall be administered under the direction and supervision of the Secretary of the Interior by a Director and not more than two Assistant Directors, who shall be appointed by the Secretary and perform such duties as he shall prescribe. The offices of Commissioner and Deputy Commissioner of Fisheries and the offices of Chief and Associate Chief of the Bureau of Biological Survey are abolished and their functions transferred to the consolidated agency.

SEC. 4. *Recorder of General Land Office.*—The office of Recorder of the General Land Office is abolished. The functions of the Recorder shall be exercised under the direction and supervision of the Secretary of the Interior through such officers or employees of the General Land Office as he may designate.

DEPARTMENT OF AGRICULTURE

5. *Surplus Marketing Administration.*—The Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration of the Department of Agriculture and its functions and the Federal Surplus Commodities Corporation as an agency of the Department of Agriculture and its functions are consolidated into an agency in the Department of Agriculture to be known as the Surplus Marketing Administration. The Surplus Marketing Administration shall be headed by an Administrator, who shall be appointed by and subject to the direction and supervision of the Secretary of Agriculture.

DEPARTMENT OF LABOR

SEC. 6. *Offices in the Immigration and Naturalization Service abolished.*—The offices of commissioner of immigration of the several ports and the offices of district commissioner of immigration and naturalization in the Department of Labor are abolished, and their functions shall be administered under the supervision of the Secretary of Labor by the Commissioner of Immigration and Naturalization through such district directors of immigration and naturalization as the Commissioners shall designate.

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CIVIL AERONAUTICS AUTHORITY

SEC. 7. *Functions of the Administrator transferred.*—The functions vested in the Civil Aeronautics Authority by the Civilian Pilot Training Act of 1939; the functions of aircraft registration and of safety regulation described in titles V and VI of the Civil Aeronautics Act of 1938, except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing; the function provided for by section 1101 of the Civil Aeronautics Act of 1938; and the functions of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator, are transferred from the Civil Aeronautics Authority to and shall be exercised by the Administrator, who shall hereafter be known as the Administrator of Civil Aeronautics.

GENERAL PROVISIONS

SEC. 8. *Transfer of records, property, and personnel.*—All records and property (including office equipment) of the several agencies, and all records and property used primarily in the administration of any functions, transferred or consolidated by this Plan and all the personnel used in the administration of such agencies and functions (including officers whose chief duties relate to such administration and whose offices are not abolished) are transferred or consolidated, as the case may be, within the department or agency concerned, for use in the administration of the agencies and functions transferred or consolidated by this Plan: *Provided*, That any personnel transferred or consolidated within any department or agency by this section found by the head of such department or agency to be in excess of the personnel necessary for the administration of the functions transferred or consolidated shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SEC. 9. *Transfer of funds.*—So much of the unexpended balances of appropriations, allocations, or other funds available (including funds available for the fiscal year ending June 30, 1941) for the use of any agency in the exercise of any function transferred or consolidated by this Plan, or for the use of the head of any department or agency in the exercise of any function so transferred or consolidated, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred within the department or agency concerned for use in connection with the exercise of the function so transferred or consolidated. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

TRANSMITTING REORGANIZATION PLAN NO. IV[1]

To the Congress of the United States:

One year ago the Congress directed the President to investigate the organization of the Executive establishment and to submit plans for such transfers, consolidations, and abolitions of agencies as were found necessary and desirable.

Shortly thereafter I submitted Reorganization Plan No. I which improved the over-all management of the Executive branch. This was followed by Reorganization Plan No. II which effected a better allocation of certain agencies and activities among departments. Although these two plans have been in effect less than a year, their benefits have already been gratifying. I have found the task of coordinating the work of the Executive branch less difficult. Many improvements in service have occurred, and substantial economies have resulted.

Reorganization Plan No. III, recently submitted, is a third step which will improve intradepartmental management through internal adjustment in certain agencies.

I am now proposing a fourth reorganization plan which provides for a number of interdepartmental reorganizations. These changes are designed to increase efficiency in the administration of Government services by a more logical grouping of certain functions and by a further reduction in the number of independent agencies reporting directly to the Chief Executive.

Accordingly, I am transmitting herewith Reorganization Plan No. IV, which, after investigation, I have prepared in pursuance of section 4 of the Reorganization Act of 1939 (Public, No. 19, 76th Cong., 1st sess.), approved April 3, 1939; and I declare with respect to each reorganization made in this plan, that I have found such reorganization necessary to accomplish one or more of the purposes of section 1 (a) of the act:

1. To reduce expenditures;
2. To increase efficiency;
3. To consolidate agencies according to major purposes;
4. To reduce the number of agencies by consolidating those having similar functions and by abolishing such as may not be necessary;
5. To eliminate overlapping and duplication of effort.

The plan I now transmit I shall describe briefly as follows:

Department of State.—The Dominican Customs Receivership is transferred to the Department of State from the Division of Territories and Island Possessions in the Department of the Interior. The

[1] Printed as H. Doc. No. 692, 76th Cong., 3d sess.

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State Department is the most appropriate agency to supervise this activity which involves relations with a foreign government.

Treasury Department.—The plan transfers to the Secretary of the Treasury the function of the Attorney General of approving out-of-court settlements—technically termed compromises—of cases arising under the Federal Alcohol Administration Act which have not, prior to compromise, been referred to the Department of Justice for prosecution. The present requirement that the Attorney General approve all compromises results in a cumbersome, time-consuming procedure which the small amounts involved do not warrant. The proposed handling will be simpler, less likely to cause delay, and consistent with the procedure now followed in compromises arising under other acts which the Treasury Department administers.

Department of Justice.—Executive Order No. 6166, issued June 10, 1933, provided for the centralization of the disbursement function in a Division of Disbursement in the Treasury Department. The resulting increase in efficiency has amply demonstrated the wisdom of centralizing disbursement work. In effectuating the plan, however, I have found it necessary to postpone its application to United States marshals because of the unusual character of their disbursing work in serving the courts. Experience indicates that this arrangement should be continued. I am proposing, therefore, the permanent transfer of the disbursement function of United States marshals from the Treasury Department to the Department of Justice.

Post Office Department.—It has also been found desirable to continue permanently in the Post Office Department the disbursement of Post Office funds. The special character of the work of this Department, involving disbursements in thousands of post offices throughout the Nation, requires here, as well as in the case of the United States marshals, a departure from the sound theory of central disbursing. With its far-flung facilities, the Post Office Department is better equipped to carry on this work than the Division of Disbursement.

Another proposal affecting the Post Office Department relates to the transportation of mail and other material between departments. In the early colonial days, the interchange of correspondence and messages was by the simple hand-to-hand method. Gradually a more systematic device became necessary to transport messages, with the resultant evolution of the postal service. Business and private citizens in general have made use of that service, and today we have in our Post Office Department the most efficient organization of its kind in the world. However, here in the Capital City, the Federal Government, instead of utilizing fully the resources of the Post Office Department to maintain its mail and messenger service, has permitted a multiplicity of interdepartmental messenger services, each serving its own department, bureau, or agency. This duplication of services is uneconomical and results in a constant crisscrossing and overlapping of personnel and equipment, all engaged in a common activity. I am sure that the average citizen in Washington, as well as officials of the Government itself, have wondered at this paradox whereby the Federal Government is failing to make the fullest use of one of its own agencies which is specially equipped to render a simple, centralized service for all the other agencies. This reorganization plan proposes to do exactly that; to provide for the transportation of mail,

documents, packages, and similar material between all buildings occupied by Government offices on a regularly scheduled basis of sufficient frequency to meet the reasonable and normal requirements of these offices and to reduce to a minimum the constant dispatching of messengers on so-called urgent and emergency errands. This service will be available on a reimbursement basis to the agencies exempted by the Reorganization Act.

Department of the Interior.—I propose to transfer to the Department of the Interior the activities of the Soil Conservation Service relating to soil and moisture conservation on lands under the jurisdiction of the Interior Department. With respect to private lands, the soil-conservation work of the Federal Government is primarily of a consultative character and can best be carried on by the Department of Agriculture through cooperation of the farmers throughout the country. In the case of Federal lands, this work includes the actual application by the Government of soil-conservation practices and is an appropriate function of the agency administering the land.

Department of Commerce.—One of the purposes of the Reorganization Act is to reduce the number of administrative agencies and thereby simplify the task of executive management. We have made substantial progress toward this objective under previous reorganization plans. I am now proposing another step in this direction by placing the Civil Aeronautics Authority within the framework of the Department of Commerce. Reorganization Plan No. III, which deals with intradepartmental changes, draws a more practical separation between the functions of the Administrator and the Civil Aeronautics Board. In Plan IV, which is concerned with interdepartmental reorganization, I am bringing the Authority into the departmental structure. The Administrator will report to the Secretary of Commerce. The five-member Board, however, will perform its rule-making, adjudicative, and investigative functions independent of the Department. In the interest of efficiency it will be supplied by the Department with budgeting, accounting, procurement, and other office services. As a result of the adjustments provided in Plans III and IV, I believe the Civil Aeronautics Board will be able effectively to carry forward the important work of accident investigation heretofore performed by the Air Safety Board. In addition to the effective and coordinated discharge of accident investigation work which this transfer will facilitate, economies in administration will be possible.

The importance of the Weather Bureau's functions to the Nation's commerce has also led to the decision to transfer this Bureau to the Department of Commerce. The development of the aviation industry has imposed upon the Weather Bureau a major responsibility in the field of air transportation. The transfer to the Department of Commerce, as provided in this plan, will permit better coordination of Government activities relating to aviation and to commerce generally, without in any way lessening the Bureau's contribution to agriculture.

Department of Labor.—The plan transfers to the Secretary of Labor the functions of the Secretary of the Treasury and the Secretary of the Interior relating to the enforcement of the minimum-wage provisions in contracts for Federal construction. The Secre-

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tary of Labor is responsible by law for the determination of the prevailing wage rates included in Government contracts and should properly have complete responsibility for their enforcement.

United States Maritime Commission.—I propose to transfer to the United States Maritime Commission the functions of the Secretary of the Navy relating to State marine and nautical schools. These schools are devoted to training young men for junior officer positions in the merchant marine. The general responsibility for developing facilities for the training of merchant marine personnel is vested in the Maritime Commission. The proposed transfer will thus permit closer coordination of the nautical schools with the training work of the Maritime Commission.

Federal Security Agency.—The Federal Security Agency has as its major purposes the promotion of social and economic security, educational opportunity, and the health of the citizens. The functions of Saint Elizabeths Hospital, Freedmen's Hospital, Howard University, and Columbia Institution for the Deaf plainly come squarely within these purposes. Consequently, I find it necessary and desirable in pursuance of the objectives of the Reorganization Act to transfer to the Federal Security Agency the responsibilities of the Interior Department relating to these institutions. The work of Saint Elizabeths Hospital and Freedmen's Hospital is much more akin to the activities of the Public Health Service in the Federal Security Agency than to those of any other Federal establishment. Similarly, Howard University and Columbia Institution for the Deaf can derive more benefit from association with the Office of Education in the Federal Security Agency than with any other Federal organization.

I further propose to transfer to the Federal Security Agency the Food and Drug Administration with the exception of two activities intimately related to the work of the Department of Agriculture. The work of the Food and Drug Administration is unrelated to the basic functions of the Department of Agriculture. There was, however, no other agency to which these functions more appropriately belonged until the Federal Security Agency was created last year. I now believe that the opportunity for the Food and Drug Administration to develop along increasingly constructive lines lies in this new Agency. There is also need for coordination of certain of its functions with those of the Public Health Service. To accomplish these objectives, the plan establishes the Administration as a separate unit within the Federal Security Agency.

Economies.—Functions may be transferred or consolidated under this Reorganization Act, but the abolition of functions is prohibited. Congress alone can curtail or abolish functions now provided by law. Savings must come from administrative expenses which comprise only a small fraction of Federal expenditures. This precludes the making of large reductions in expenditure through reorganization plans. The major achievements in reorganizations under this formula must inevitably be found in improved management and more effective service. However, some savings in administrative expenses will be possible under this plan. I estimate the immediate annual savings at approximately $300,000.

Future reorganization needs.—The reorganization plans thus far submitted do not exhaust the transfers, consolidations, and abolitions

that may be necessary and desirable. Some changes that now appear to have merit require further study. It is the responsibility of the President as Chief Executive to see that needed adjustments and improvements in administrative organization are made. But this he cannot adequately accomplish without proper statutory authority. The present Reorganization Act entirely exempts some 21 administrative agencies from consideration. Furthermore this act expires on January 20, 1941.

I strongly recommend the reenactment of the Reorganization Act, without exemptions. The structure and management of our Government, like the activities and services it performs, must be kept abreast of social and economic change.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
April 11, 1940.

REORGANIZATION PLAN NO. IV[2]

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 11, 1940, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939[3]

DEPARTMENT OF STATE

SECTION 1. *Transfer of Dominican Customs Receivership.*—The functions of the Division of Territories and Island Possessions in the Department of the Interior relating to the Dominican Customs Receivership are transferred to the Department of State and shall be administered by the Secretary of State or under his direction and supervision by such agency in the Department of State as he shall designate.

DEPARTMENT OF THE TREASURY

SEC. 2. *Approval of compromises.*—The functions of the Attorney General relating to the approval of compromises made in accordance with the provisions of section 7 of the Federal Alcohol Administration Act are transferred to the Secretary of the Treasury, to be exercised by him or under his direction and supervision by such officer in the Department of the Treasury as he shall designate: *Provided*, That exclusive jurisdiction to compromise cases arising under the Federal Alcohol Administration Act which are pending before the courts or which have been or may hereafter be referred to the Department of Justice for action shall be vested in the Attorney General, and may be exercised by him or by any officer in the Department of Justice designated by him.

DEPARTMENT OF JUSTICE

SEC. 3. *Disbursement functions of United States marshals.*—All functions relating to disbursement by United States marshals which would otherwise become functions of the Treasury Department on

[2] Public Res. No. 75, approved June 4, 1940, provides that Reorganization Plans Nos. III and IV shall take effect on June 30, 1940, notwithstanding the provisions of the Reorganization Act of 1939.
[3] 53 Stat. 561, 5 U. S. C. 133 et seq.

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July 1, 1940, by virtue of the provisions of Executive Order No. 6166 of June 10, 1933, as amended, are transferred to and vested in the Department of Justice to be exercised by United States marshals under the supervision of the Attorney General in accordance with existing statutes pertaining to such functions: *Provided*, That the Attorney General shall furnish the Secretary of the Treasury, when requested by him, such information as the Treasury Department may require with respect to the amounts of money received and disbursed by marshals and the procedure followed in connection therewith: *Provided further*, That upon the request of the Secretary of the Treasury, and with the approval of the Attorney General, the facilities of the Department of Justice may be utilized in the disbursement, or aiding in the disbursement, of public moneys of the United States available for expenditure by any agency of the Government.

POST OFFICE DEPARTMENT

SEC. 4. *Functions of postal disbursements.*—All functions relating to the disbursement of the postal revenues and all other funds under the jurisdiction of the Post Office Department and the Postmaster General and the Board of Trustees of the Postal Savings System which would otherwise become functions of the Treasury Department on July 1, 1940, by virtue of Executive Order No. 6166 of June 10, 1933, as amended, are transferred to and vested in (*a*) the Board of Trustees of the Postal Savings System as to postal savings disbursements, and (*b*) the Post Office Department as to all other disbursements involved, and such functions shall be exercised by postmasters and other authorized disbursing agents of the Post Office Department and of the Postal Savings System in accordance with existing statutes pertaining to such functions: *Provided*, That the Postmaster General shall furnish to the Secretary of the Treasury, when requested by him, such information as the Treasury Department may require with respect to the amounts of money received and disbursed by the Post Office Department, its postmasters and other fiscal officers, and the procedure followed in connection therewith: *Provided further*, That upon request of the Secretary of the Treasury, and with the approval of the Postmaster General, the facilities of the Post Office Department may be utilized in the disbursement, or aiding in the disbursement, of public moneys of the United States available for expenditure by any agency of the Government.

SEC. 5. *Transfer of interbuilding messenger functions.*—(*a*) Except as prohibited by section 3 (b) of the Reorganization Act of 1939, the function of regular interbuilding messenger service (including the transportation of mail) and the function of transportation of mail between Government agencies and the city post office, now exercised in the District of Columbia by agencies of the Government, are transferred from such agencies to and consolidated in the Post Office Department and shall be administered by the Postmaster General under such rules and regulations as the President shall prescribe: *Provided*, That this section shall not apply to the transportation of moneys and securities by armored truck or by other special services, or to messenger service between contiguous buildings.

(*b*) The Director of the Bureau of the Budget may waive the transfer of any motor vehicle coming within the purview of section 14 of

this plan where he finds that the retention of such vehicle is essential to the performance of functions other than those transferred by this section.

DEPARTMENT OF THE INTERIOR

SEC. 6. *Certain functions of the Soil Conservation Service transferred.*—The functions of the Soil Conservation Service in the Department of Agriculture with respect to soil and moisture conservation operations conducted on any lands under the jurisdiction of the Department of the Interior are transferred to the Department of the Interior and shall be administered under the direction and supervision of the Secretary of the Interior through such agency or agencies in the Department of the Interior as the Secretary shall designate.

DEPARTMENT OF COMMERCE

SEC. 7. *Transfer of Civil Aeronautics Authority.*—(*a*) The Civil Aeronautics Authority and its functions, the Office of the Administrator of Civil Aeronautics and its functions, and the functions of the Air Safety Board are transferred to the Department of Commerce.

(*b*) The functions of the Air Safety Board are consolidated with the functions of the Civil Aeronautics Authority, which shall hereafter be known as the Civil Aeronautics Board and which shall, in addition to its other functions, discharge the duties heretofore vested in the Air Safety Board so as to provide for the independent investigation of aircraft accidents. The offices of the members of the Air Safety Board are abolished.

(*c*) The Administrator of Civil Aeronautics, whose functions shall be administered under the direction and supervision of the Secretary of Commerce, and the Civil Aeronautics Board, which shall report to Congress and the President through the Secretary of Commerce, shall constitute the Civil Aeronautics Authority within the Department of Commerce: *Provided*, That the Civil Aeronautics Board shall exercise its functions of rule-making (including the prescription of rules, regulations, and standards), adjudication, and investigation independently of the Secretary of Commerce: *Provided further*, That the budgeting, accounting, personnel, procurement, and related routine management functions of the Civil Aeronautics Board shall be performed under the direction and supervision of the Secretary of Commerce through such facilities as he shall designate or establish.

SEC. 8. *Transfer of Weather Bureau.*—The Weather Bureau in the Department of Agriculture and its functions are transferred to the Department of Commerce and shall be administered under the direction and supervision of the Secretary of Commerce: *Provided*, That the Department of Agriculture may continue to make snow surveys and to conduct research concerning: (a) relationships between weather and crops, (b) long-range weather forecasting, and (c) relationships between weather and soil erosion.

DEPARTMENT OF LABOR

SEC. 9. *Transfer of certain functions relating to enforcement of wage payments on public construction.*—The functions of the Secretary of the Treasury and the Secretary of the Interior under section 2 of the Act of June 13, 1934, entitled "An Act to effectuate the pur-

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pose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes" (48 Stat. 948), are transferred to the Secretary of Labor and shall be administered by him or under his direction and supervision by such agency in the Department of Labor as the Secretary shall designate.

UNITED STATES MARITIME COMMISSION

SEC. 10. *Transfer of nautical school functions.*—The functions of the Secretary of the Navy with respect to furnishing, maintaining, and repairing vessels for the use of State marine or nautical schools and with respect to administering grants of funds for the support of such schools are transferred to and shall be administered by the United States Maritime Commission. Jurisdiction over vessels, apparel, charts, books, and instruments now loaned to State marine or nautical schools is transferred from the Secretary of the Navy to the United States Maritime Commission.

FEDERAL SECURITY AGENCY

SEC. 11. *Transfer of certain Interior Department institutions*—(*a*) *Saint Elizabeths Hospital.*—Saint Elizabeths Hospital in the Department of the Interior and its functions are transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator. The annual report required to be submitted to the Congress by the superintendent of the Hospital shall be submitted through the Federal Security Administrator. The annual report required to be furnished to the Secretary of the Interior by the Board of Visitors shall be furnished to the Federal Security Administrator.

(*b*) *Freedmen's Hospital.*—Freedmen's Hospital in the Department of the Interior and its functions are transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator.

(*c*) *Howard University.*—The functions of the Department of the Interior relating to the administration of Howard University are transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator. The annual report required to be furnished to the Secretary of the Interior by the president and directors of the University shall be furnished to the Federal Security Administrator. The Office of Education shall continue to make its inspections of and reports on the affairs of Howard University in accordance with the provisions of existing law.

(*d*) *Columbia Institution for the Deaf.*—The functions of the Department of the Interior relating to the administration of the Columbia Institution for the Deaf are transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator. The annual report required to be furnished to the Secretary of the Interior by the president and directors of the Institution shall be furnished to the Federal Security Administrator, and the annual report of the superintendent of the Institution to the Congress shall be submitted through the Federal Security Administrator.

(e) *Federal Security Administrator.*—The functions transferred by this section shall be administered under the direction and supervision of the Federal Security Administrator through such officers or subdivisions of the Federal Security Agency as the Administrator shall designate.

SEC. 12. *Transfer of Food and Drug Administration.*—The Food and Drug Administration in the Department of Agriculture and its functions, except those functions relating to the administration of the Insecticide Act of 1910 and the Naval Stores Act, are transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator. The Chief of the Food and Drug Administration shall hereafter be known as the Commissioner of Food and Drugs.

GENERAL PROVISIONS

SEC. 13. *Transfer of functions of heads of departments.*—Except as otherwise provided in this Plan, the functions of the head of any department relating to the administration of any agency or function transferred from his department by this Plan are transferred to, and shall be exercised by, the head of the department or agency to which such transferred agency or function is transferred by this Plan.

SEC. 14. *Transfer of records, property, and personnel.*—Except as otherwise provided in this Plan, all records and property (including office equipment) of the several agencies, and all records and property used primarily in the administration of any functions transferred by this Plan, and all personnel used in the administration of such agencies and functions (including officers whose chief duties relate to such administration and whose offices are not abolished) are transferred to the respective agencies concerned, for use in the administration of the agencies and functions transferred by this Plan: *Provided*, That any personnel transferred to any agency by this section found by the head of such agency to be in excess of the personnel necessary for the administration of the functions transferred to his agency shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SEC. 15. *Transfer of funds.*—So much of the unexpended balances of appropriations, allocations, or other funds available for the use of any agency in the exercise of any function transferred by this Plan, or for the use of the head of any agency in the exercise of any function so transferred, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred to the agency concerned for use in connection with the exercise of the function so transferred. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

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LETTER OF THE DIRECTOR OF THE BUREAU OF THE BUDGET CONSTRUING REORGANIZATION PLANS NO. III AND NO. IV

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., May 2, 1940.

MY DEAR MR. HINCKLEY: If Congress takes no adverse action on Reorganization Plans III and IV, the effectuation of these plans will require that the Director of the Bureau of the Budget, subject to the approval of the President, determine the necessary transfers of funds. In view of the limited time available and because of certain questions arising out of the complexity of the Civil Aeronautics Act, the Bureau of the Budget has consulted with the Department of Justice in order to establish a sound basis for the distribution of the available appropriation balances of the Civil Aeronautics Authority. The Attorney General has agreed to the following interpretive statements concerning the civil aeronautics provisions of the two plans:

1. Plan III centralizes in the Administrator, who is hereafter to be known as the Administrator of Civil Aeronautics, those functions that are essentially of an administrative character as distinguished from those relating to economic regulation; the prescription of safety standards, rules, and regulations; and the suspension and revocation of certificates after hearing. Thus, in addition to the functions now vested in the Administrator by the Civil Aeronautics Act of 1938, he will be responsible for the administration of the Civilian Pilot Training Act of 1939; the issuance and amendment of airman, aircraft, and air-carrier certificates; emergency suspension of certificates; the registration of aircraft, including the recordation of conveyances; the enforcement of safety rules, regulations, and standards; and the control of notification as to hazards to air commerce.

2. Plan III divests the Authority of all control it now has over the personnel and expenditures of the Administrator.

3. Plan III leaves the Authority with all the functions described in title 4 (Air Carrier Economic Regulation) of the Civil Aeronautics Act; such of those functions described in title 5 (Nationality and Ownership of Aircraft) and title 6 (Civil Aeronautics Safety Regulation) as relate to the prescription of safety standards, rules, and regulations, and the suspension and revocation of certificates after hearing; and the functions vested in the Authority by section 205 (a) and title 10. In connection with the suspension and revocation of certificates, it should be noted that a waiver of a hearing would not operate to deprive the Authority of its jurisdiction.

4. In performing air-safety work, the Administrator will be bound by the rules of the Authority and the extent of his administrative discretion will be entirely dependent upon the rules so prescribed.

5. While the Administrator may submit recommendations to the Board as to safety rules, regulations, and standards, it is anticipated that the Board will have adequate technical facilities for arriving at its own independent determination as to the soundness of such recommendations, and for developing such material on its own initiative.

6. In order to eliminate the existing confusion in terminology, plan IV provides that the present five-member Authority shall hereafter be known as the Civil Aeronautics Board, and employs the term Civil Aeronautics Authority merely as an over-all designation for the Administrator of Civil Aeronautics and the Civil Aeronautics Board.

7. Plan IV transfers to the Civil Aeronautics Board all functions now performed by the Air Safety Board.

8. In performing its functions, including those mentioned above, the Civil Aeronautics Board will be entirely independent of and in no way subject to control by the Department of Commerce or the Secretary thereof. This independence is specifically referred to in two separate paragraphs of plan IV.

9. The requirement in plan IV that the Board report to Congress and the President through the Secretary of Commerce provides for the routing of such documents through the Secretary so that he may have an opportunity to examine

them and append such comments as he may wish to make. This provision does not imply that the Secretary may in any way delete or revise the reports and recommendations of the Civil Aeronautics Board.

10. In providing that the routine management functions of the Board shall be performed under the direction and supervision of the Secretary of Commerce through such facilities as he shall designate or establish, plan IV is designed to prevent the uneconomical duplication of such facilities by the Board, the personnel of which will be relatively small. This provision is not intended to divest the Board of its authority to appoint and control all of its personnel, to authorize expenditures, or to determine and support the budget estimates that are submitted to the Bureau of the Budget. As stated in the President's message, its purpose is to make available to the Board, in the interest of efficiency, departmental services in connection with these functions.

11. The Board is left with full authority to make its contacts with other agencies of the Federal Government and with State and foreign governments. It is reasonable to assume that the Board will make the necessary arrangements with the Secretary of Commerce so as to coordinate such contacts with those made by the Administrator and thereby minimize duplication of effort.

12. Those functions of the Secretary of the Authority which relate to the maintenance of dockets and the keeping of minutes cannot be regarded as routine management functions and will, therefore, remain directly under the Board.

13. Plan IV obviously contemplates that the Board will have its own legal and other technical facilities. Any other interpretation would be in direct conflict with the independence which is to surround the Board's determinations.

14. In connection with the investigation of air accidents, the Board, pursuant to the statutory prescription of the duties of the present Air Safety Board, will furnish the Administrator of Civil Aeronautics with copies of any reports or recommendations that relate to the functions vested in the Administrator.

15. The compromise of civil penalties for violations of titles 5 and 6 becomes a function of the Administrator since it must be regarded as an integral part of the responsibility for the enforcement of these provisions. On the other hand, the Board will have the power to make compromises involving violations of title 7.

16. As contrasted with the Civil Aeronautics Board, the Administrator will be under the direction and supervision of the Secretary of Commerce.

I feel certain that this interpretation is in full accord with what was envisaged by the President in submitting the reorganization proposals to Congress. Identical copies of this letter are being sent to the Secretary of Commerce and the Administrator of the Civil Aeronautics Authority.

Yours sincerely,

HAROLD D. SMITH, *Director.*

Hon. ROBERT H. HINCKLEY,
Chairman, Civil Aeronautics Authority, Washington, D. C.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 2, 1940.

Hon. HAROLD D. SMITH,
Director of the Bureau of the Budget, Washington, D. C.

MY DEAR MR. DIRECTOR: I have examined your letter of this date to the Secretary of Commerce [1] in which you set forth your interpretation of the provisions of reorganization plans III and IV relating to the Civil Aeronautics Authority, and I agree with the conclusions reached by you.

Respectfully.

ROBERT H. JACKSON, *Attorney General.*

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[1] Note the last sentence of the letter to the Chairman of the Civil Aeronautics Authority set forth above.

U. S. GOVERNMENT PRINTING OFFICE: 1949

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[PUBLIC LAW 778—81ST CONGRESS]

[CHAPTER 938—2D SESSION]

[S. 3995]

AN ACT

To amend the Civil Aeronautics Act of 1938, as amended, to authorize the Civil Aeronautics Board and the Secretary of Commerce to undertake security measures relative to the regulation and control of air commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Civil Aeronautics Act of 1938, as amended, is amended by the addition of a new title XII, reading as follows:

"TITLE XII—SECURITY PROVISIONS

"SECRETARY OF COMMERCE AND CIVIL AERONAUTICS BOARD

"SEC. 1201. The purpose of this title is to establish security provisions which will encourage and permit the maximum use of civil aircraft consistent with the national security. Whenever the President determines such action to be required in the interest of national security, he may direct the Secretary of Commerce and the Civil Aeronautics Board to exercise the powers, duties, and responsibilities granted in this title to the extent, in the manner, and for such periods of time as the President considers necessary.

"NATIONAL SECURITY REGULATIONS

"SEC. 1202. The Board shall consider requirements of national security as well as safety of flight in air commerce, in exercising its powers and carrying out its responsibilities under title VI of this Act.

"SECURITY CONTROL OF AIR TRAFFIC

"SEC. 1203. The Secretary of Commerce is authorized to establish such zones or areas in the airspace above the United States, its Territories, and possessions (including areas of land or water administered by the United States under international agreement) as he may find necessary in the interests of national security; and may, after consultation with the Department of Defense and the Board, by rule, regulation, or order within such zones or areas, prohibit or restrict flights of aircraft which he cannot effectively identify, locate, and control with available facilities: *Provided*, That the Secretary of Commerce shall consult with the Department of State before exercising the authority provided in this section with respect to areas of land or water administered by the United States under international agreement.

"PENALTIES

"SEC. 1204. In addition to the penalties otherwise provided for by this Act, any person who knowingly or willfully violates any pro-

vision of this title, or any rule, regulation, or order issued thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not exceeding $10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment.

"TERMINATION OF TITLE

"SEC. 1205. The provision of this title shall expire on such date as may be specified by concurrent resolution of the two Houses of Congress."

Approved September 9, 1950.

[PUBLIC LAW 670—81ST CONGRESS]

[CHAPTER 643—2D SESSION]

[S. 4]

AN ACT

Authorizing the advanced training in aeronautics of technical personnel of the Civil Aeronautics Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 of the Civil Aeronautics Act of 1938, as amended, is amended to read as follows:

"SEC. 307. (a) The Secretary of Commerce is empowered and directed to make plans for such orderly development and location of landing areas, airways, and all other aids and facilities for air navigation, as will best meet the needs of, and serve the interest of safety in, civil aviation.

"(b) The Secretary of Commerce is empowered to detail annually employees of the Civil Aeronautics Administration engaged in technical or professional duties for training at Government expense, either at civilian or other institutions not operated by the Secretary of Commerce. Such courses of instructions shall include, but not be limited to, aerodynamics, engineering mechanics, aircraft design and construction, and related subjects dealing with the scientific problems of aeronautics, such as advanced engineering techniques and practices, training in celestial navigation, advanced flight and flight test methods and procedures, application of medical and legal science to problems of aviation, and the use of radio in aviation. There is hereby authorized to be appropriated such sums, not to exceed $50,000 for any fiscal year, as may be necessary to carry out the provisions of this subsection.

"(c) The Secretary of Commerce is empowered to conduct a school or schools for the purpose of training employees of the Civil Aeronautics Administration in those subjects necessary for the proper administration of the aircraft, airmen, and air operation safety standards authorized under this Act."

Approved August 8, 1950.

[PUBLIC LAW 635—81ST CONGRESS]

[CHAPTER 517—2D SESSION]

[S. 3377]

AN ACT

To amend the Civil Aeronautics Act of 1938, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902 (b) of the Civil Aeronautics Act of 1938, as amended, is amended to read as follows:

"(b) Any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly uses or attempts to use any such fraudulent certificate, and any person who knowingly and willfully displays or causes to be displayed on any aircraft, any marks that are false or misleading as to the nationality or registration of the aircraft, shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment."

Approved August 3, 1950.

[PUBLIC LAW 186—81ST CONGRESS]

[CHAPTER 362—1ST SESSION]

[S. 447]

AN ACT

To amend the Civil Aeronautics Act of 1938, as amended, to regulate the transportation, packing, marking, and description of explosives and other dangerous articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902 of the Civil Aeronautics Act of 1938, as amended, is amended by inserting after subsection (g) thereof the following new subsection:

"Transportation of Explosives and Other Dangerous Articles

"(h) (1) Any person who knowingly delivers or causes to be delivered to an air carrier or to the operator of any civil aircraft for transportation in air commerce, or who causes the transportation in air commerce of, any shipment, baggage, or property, the transportation of which would be prohibited by any rule, regulation, or requirement prescribed by the Civil Aeronautics Board, under title VI of this Act, relating to the transportation, packing, marking, or description of explosives or other dangerous articles shall, upon conviction thereof for each such offense, be subject to a fine of not more than $1,000, or to imprisonment not exceeding one year, or to both such fine and imprisonment: *Provided*, That when death or bodily injury of any person results from an offense punishable under this subsection, the person or persons convicted thereof shall, in lieu of the foregoing penalty, be subject to a fine of not more than $10,000 or to imprisonment not exceeding ten years, or to both such fine and imprisonment.

"(2) in the exercise of its authority under title VI of this Act, the Civil Aeronautics Board may provide by regulation for the application in whole or in part of the rules or regulations of the Interstate Commerce Commission (including future amendments and additions thereto) relating to the transportation, packing, marking, or description of explosives or other dangerous articles for surface transportation, to the shipment and carriage by air of such articles. Such applicability may be terminated by the Board at any time. While so made applicable, any such rule or regulation, or part thereof, of the Interstate Commerce Commission shall for the purposes of this Act be deemed to be a regulation of the Board prescribed under title VI."

Approved July 26, 1949.

[PUBLIC LAW 274—81ST CONGRESS]

[CHAPTER 520—1ST SESSION]

[H. R. 781]

AN ACT

To amend title II of the Civil Aeronautics Act of 1938, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Civil Aeronautics Act of 1938, as amended, is amended by adding at the end thereof a new section as follows:

"SUPPLIES AND MATERIALS FOR ALASKA

"SEC. 207. When appropriations for any fiscal year for the Civil Aeronautics Administration have not been made prior to the first day of March preceding the beginning of such fiscal year, the Administrator of Civil Aeronautics may authorize such officer or officers as may be designated by him to incur obligations for the purchase and transportation of supplies and materials necessary to the proper execution of the Administration's functions in Alaska in amounts not to exceed 75 per centum of the amount that had been made available for such purposes for the fiscal year then current, payments of these obligations to be made from the appropriations for the next succeeding fiscal year when they become available."

Approved August 30, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 280

CAPITAL AIRLINES, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 8-17) is reported at 90 F. Supp. 926.

JURISDICTION

The judgment of the Court of Claims was entered on June 5, 1950 (R. 17). The petition for a writ of certiorari was filed on August 30, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTIONS PRESENTED

1. Whether the Court of Claims has jurisdiction to increase the rate of compensation paid to an

air carrier certificated under the Civil Aeronautics Act for the transportation of mail by air, and to award it a money judgment to reimburse it for losses incurred under a rate established by the Civil Aeronautics Board pursuant to its statutory authority "to fix and determine * * * the fair and reasonable rates of compensation for the transportation of mail by aircraft * * * ."

2. Whether the provisions of the Civil Aeronautics Act that air carriers holding certificates of convenience and necessity (issued to them upon their own application) shall furnish the air transportation so certificated, involve a taking of property entitling a carrier to just compensation under the Fifth Amendment for losses sustained while operating under rates fixed by a Board order which the carrier did not seek to have set aside as confiscatory or unlawful.

STATUTE INVOLVED

The pertinent provisions of the Civil Aeronautics Act of 1938 (Act of June 23, 1938, 52 Stat. 973, as amended, 49 U. S. C. 401, *et seq.*) appear in the pamphlet copy of the Act submitted with this brief.

STATEMENT

The pertinent allegations of petitioner's complaint in the Court of Claims follow (R. 1-7):

Petitioner, Capital Airlines, Inc., is an "air carrier," as defined in Section 1 of the Civil Aeronautics Act of 1938, and is engaged in the air

transportation of passengers, property and mail, authorized by certificates of convenience and necessity issued to it by the Civil Aeronautics Board in accordance with the Act (R. 1). Under the Act petitioner could continue to engage in such air transportation in which it had been engaged prior to the Act's enactment only if it applied for and obtained from the Board certificates authorizing these services (R. 1). From and after the issuance of these certificates for which it applied, petitioner was required by various sections of the Act to provide the air transportation services authorized by the certificates, including the transportation of mail tendered it by the Postmaster General, and, in addition, to provide safe and adequate services and facilities for such transportation (R. 2).[1] For the furnishing of these services and the use of its property "under the compulsory provisions of the Act," petitioner claimed that it was entitled to receive just compensation under the Fifth Amendment (R. 2).

On December 16, 1942, the Board, acting under Section 406(a), fixed a rate of .3 mill per pound mile to be paid petitioner for the mail transportation services which it might thereafter be required to furnish (R. 3-4). This rate which continued in

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[1] According to petitioner, Section 401(k) of the Act prohibited it from abandoning any route or part thereof for which it had received a certificate, Section 902 declared violations of these obligations to be criminal offenses, and Section 401(h) authorized the Board to revoke issued certificates for failure to comply therewith (R. 2).

effect until January 13, 1947 [2] was sufficient until September 1, 1945, but insufficient thereafter to "accomplish the payment of just compensation" (R. 4). During the period from September 1, 1945 to January 13, 1947, petitioner sustained a net aggregate loss of $3,560,566 and had an average invested capital of $14,434,823 on which it earned no return (R. 4). On this basis, petitioner computed that the just compensation to which it was entitled amounted to $5,793,308 plus interest (R. 4) and accordingly prayed judgment for that sum (R. 7).

The Court of Claims sustained the demurrer filed by the United States on the grounds, advanced by the Government (R. 7), that (1) the court lacked jurisdiction to grant the relief sought, and (2) the complaint did not allege facts sufficient to entitle petitioner to the relief sought or to constitute a cause of action (R. 8-17).

ARGUMENT

The present proceeding was instituted in the Court of Claims shortly after this Court denied

[2] On January 14, 1947, petitioner applied for reconsideration and adjustment of the rate for the past as well as a rate adjustment for the future. The Board dismissed the portion of the application relating to past rates on the ground that it had no power under the Act to adjust the mail rate for any period prior to the filing of a petition (R. 6). Upon petition for review filed under Section 1006, the Court of Appeals for the District of Columbia Circuit affirmed (*Capital Airlines, Inc.* v. *Civil Aeronautics Board*, 171 F. 2d 339) and this Court denied certiorari (336 U. S. 961) (R. 6-7). In fixing the rate for the future, the Board made no allowance for petitioner's past losses (R. 7).

certiorari in petitioner's suit against the Board (*Capital Airlines, Inc.* v. *Civil Aeronautics Board,* 171 F. 2d 339, certiorari denied, 336 U. S. 961) in which the Court of Appeals for the District of Columbia Circuit had held that the Board was without power retroactively to adjust the mail rate paid to an air line for the purpose of reimbursing it for the losses suffered prior to the filing of an application for a rate adjustment. This holding, which this Court confirmed in *TWA* v. *Civil Aeronautics Board,* 336 U. S. 601, defeated petitioner's attempt to obtain reimbursement, within the framework of the Civil Aeronautics Act, for the losses incurred during the period from September 1, 1945 to January 13, 1947, when the mail rate fixed in the Board's rate order of December 16, 1942 was allegedly unduly low.

In the present proceeding, petitioner is seeking a money judgment from the Court of Claims to reimburse it for these losses. Although petitioner has framed its complaint as one for just compensation for a taking under the Fifth Amendment, it in effect is requesting the Court of Claims (1) to find that the rate fixed by the Board's 1942 rate order failed to provide a certain minimum of revenue from 1945 to 1947 and (2) to make up the deficiency by granting a money judgment. The holding of the Court of Claims that it lacked jurisdiction so to review and revise the Board's 1942 rate order halted *in limine* petitioner's further

efforts to transform mail rate regulation under the Civil Aeronautics Act "into a cost-plus system of regulation, a construction which would not harmonize with the apparent design of the Act" (*TWA* v. *Civil Aeronautics Board, supra,* at p. 606), and is, we submit, fully supported by this Court's recent decision in *United States* v. *Jones,* 336 U. S. 641. Moreover, the additional holding below that petitioner's complaint failed to state a cause of action for a "taking" of its property entitling it to just compensation under the Fifth Amendment is likewise clearly correct. We accordingly submit that certiorari is unwarranted.

1. Contrary to petitioner's contentions (Pet. 8, 15, 23-29), the *Jones* case fully supports the holding of the Court of Claims that it lacked jurisdiction to entertain petitioner's claim. In that case, a railroad, seeking a money judgment in the Court of Claims, similarly claimed that the mail rates fixed by the Interstate Commerce Commission "do not afford just compensation under the Fifth Amendment on the ground that they do not provide for payment of the cost of the service rendered plus a reasonable return upon invested capital * * * " (336 U. S. at 646). This Court specifically held that the Court of Claims lacked jurisdiction to entertain such a suit and based that holding principally on the ground that not only had "Congress in no instance * * * expressly empowered the Court of Claims to review rate orders of the

Commission, either to set them aside or to render a money judgment for additional amounts * * *," (*supra,* at p. 651), but:

> To infer such an intention would be contrary not only in spirit to the limitations Congress has placed upon review of such orders wherever expressly provided, but also to the whole history and practice of Congress in conferring jurisdiction on the Court of Claims.
>
> * * * The limitations exemplify settled congressional policy concerning the relations of rate-making bodies and reviewing courts. Not only is rate making essentially legislative in the first instance. The policy of judicial restraint is one having regard for the expertise of special agencies charged with performing the rate-making function and for the inherent actual, as well as legal, disability of courts to execute that function. [pp. 651-652]

"And," said the Court, "this is as true of the jurisdiction of the Court of Claims" as of any other court (pp. 652-653).

> Hardly can it be conceived therefore that Congress would have provided expressly for review of the Commission's rate-making orders by the Court of Claims; or that, if it had done so, it would have authorized a money judgment for such amount as that court in its own judgment considered the rate should have produced. [p. 653]

The lack of Court of Claims jurisdiction in the instant proceeding follows *a fortiori* from the *Jones*

case. The Civil Aeronautics Act, like the Railway Mail Pay Act (39 U. S. C. 542), vests in the administrative agency, here the Board, exclusive jurisdiction to determine "fair and reasonable rates of compensation for the transportation of mail by aircraft." Section 406. This provision, this Court has already noted, follows the conventional patterns of rate making. *TWA* v. *Civil Aeronautics Board, supra,* at 605. In addition, unlike the Railway Mail Pay Act,[3] the Civil Aeronautics Act contains express provision for judicial review of the Board's orders, and has vested such review powers, not in the Court of Claims but in the courts of appeals. Section 1006. There accordingly is no basis here for even suggesting, as did the carrier in the *Jones* case, that the Court of Claims has any jurisdiction in the premises, a suggestion which this Court flatly rejected as "contrary * * * to the whole history and practice of Congress in conferring jurisdiction on the Court of Claims" (336 U. S. at 651-652).

Furthermore, this Court expressly stated in the *Jones* case that the Court of Claims lacked jurisdiction even though the claim for reimbursement of losses be framed, as petitioner attempts to do here, as one for just compensation under the Fifth Amendment (336 U. S. 669-670). The Court of

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[3] As pointed out in the *Jones* case, "* * * the Railway Mail Pay Act contains no explicit provision for judicial review of orders of the Interstate Commerce Commission fixing rates of pay for transporting the mails pursuant to authorizations of the Postmaster General for such service * * *" (at p. 647).

Claims, this Court noted, "has jurisdiction only to render a money judgment against the United States and none to remand to the Commission for further consideration a rate order which it might find confiscatory" (336 U. S. at 670) and that the rendering by the Court of Claims of a "final judgment for the amount by which it had found the order confiscatory * * * not only would short-circuit the Commission in the rate-making process, but would involve substituting the court's judgment for the Commission's as to the amount of any new rate which might be fixed." "Consequently," the Court stated, "we do not think this case falls within * * * [the just compensation] category of jurisdiction * * *" (at pp. 670-671). By the same token, petitioner's formulation of its claim here as one for "just compensation" under the Fifth Amendment no more serves to vest the Court of Claims with jurisdiction over it than did the similar formulation in the *Jones* case.

2. In any case, the Court of Claims properly held that the complaint "fails to state a cause of action against the United States entitling [petitioner] to the relief sought", for the allegations of the complaint plainly show that there had in fact not been any "taking" of petitioner's property entitling it to just compensation under the Fifth Amendment (R. 16).

Petitioner's position is premised on the fallacious assumption that the Civil Aeronautics Act im-

posed a mandatory requirement upon it to furnish air transportation services (Pet. 2-3). But the Act requires that these services be furnished only by those authorized by their certificates to perform such services (see, *e.g.*, Sections 401(m), 404) and leaves an option to the carrier whether it wishes to apply for such certificates. Hence, although petitioner is now required to perform these services by virtue of its certificates, it voluntarily "chose to operate" under the Act (*Capital Airlines, Inc.* v. *Civil Aeronautics Board, supra,* at 340) by applying for certificates of public convenience and necessity under Section 401(e). The fact that having received the requested certificates it thereafter is required to perform certain services plainly does not convert its original request for the privilege of performing these services, made in full knowledge of the concomitant obligations, into a "taking" compensable under the Fifth Amendment.

In addition, the various obligations which petitioner, as a certificated air carrier under the Civil Aeronautics Act, is required to discharge are of the same general nature as those which other regulated common carriers are required to discharge. See, *e.g.*, 49 U. S. C. 1, 15 (Interstate Commerce Act). The imposition of these obligations involves a proper exercise of the legitimate regulatory power of the Government, and not a "taking" compensable under the Fifth Amendment. *Federal Power Commission* v. *Hope Natural Gas Co.*, 320

U. S. 591, 601; *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 582 and 603 (Mr. Justice Black concurring); *Munn* v. *Illinois*, 94 U. S. 113, 134; cf. *Nebbia* v. *New York*, 291 U. S. 502, 534-539; *The Pipe Line Cases*, 234 U. S. 548; *Interstate Commerce Commission* v. *Oregon-Washington Railroad & Navigation Co.*, 288 U. S. 14, 47 (Mr. Justice Cardozo, dissenting).[4] To be sure, the Board in fixing "fair and reasonable" rates under Section 406 (a) cannot establish confiscatory rates. If a carrier regards the rates fixed by the Board as confiscatory, it has a remedy under Section 1006, which provides for judicial review of Board orders. No such remedy is here sought.

Finally, petitioner's allegation that it suffered a loss from 1945 to 1947 under the 1942 rate order does not convert its claim into one for a taking. This Court has already made it clear that the rate regulation provisions of the Civil Aeronautics Act read "like a typical public utility rate-making

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[4] *United States* v. *New York Central R. Co.*, 279 U. S. 73, relied on by petitioner (Pet. 5, 7, 12-13, 16-17), does not support its position. Although this Court there held that compensation is a constitutional requisite to compulsory carriage of the mail, it did not hold, nor does it follow, that the applicable constitutional provision is just compensation under the Fifth Amendment. Indeed, the Court of Claims, whose decision this Court affirmed, specifically noted there that it was not determining just compensation but was "giving effect to an authorized order of the Interstate Commerce Commission." 65 C. Cls. 115, 128. See, also, *Missouri Pacific Railroad Co.* v. *United States*, 59 C. Cls. 524, 532; *Griffin* v. *United States*, 110 C. Cls. 330, 373, reversed on other grounds, *sub nomine United States* v. *Jones*, 336 U. S. 641.

authority," follow "the conventional pattern," and do not break with the "traditions of rate-making." *TWA* v. *Civil Aeronautics Board, supra,* at 604, 605, fn. 5. One of the firmly established principles of public utility rate making—a principle which was deemed pertinent even when eminent domain principles were applied—is that the regulated utility is not guaranteed against losses; "the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated, business." *Federal Power Commission* v. *Natural Gas Pipeline Co., supra,* at 590; see, also, *Galveston Electric Company* v. *City of Galveston,* 258 U. S. 388, 395; *Georgia Railway & Power Company* v. *Railroad Commission,* 262 U. S. 625, 634; *Arizona Grocery Co.* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 284 U. S. 370, 387. Similarly, the Civil Aeronautics Act "with its regulatory provisions, is not intended to underwrite profitable operation of a carrier's business, any more than statutes imposing regulations of public utilities are intended to insure them a net revenue." *Capital Airlines, Inc.* v. *Civil Aeronautics Board, supra,* at 340.

CONCLUSION

The decision below is correct and there is no conflict of decisions. We respectfully submit that the petition for a writ of certiorari should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 280

CAPITAL AIRLINES, INC., *Petitioner,*

v.

THE UNITED STATES.

REPLY BRIEF OF CAPITAL AIRLINES, INC., IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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There is nothing in the Government's argument on the question of jurisdiction which merits any reply. In our original brief we pointed out the reasons why the *Jones Case* is wholly inapplicable to the case at bar, and the Government's brief on that point amounts to no more than the bald statement that we are wrong without any stated reasons for that conclusion.

The only thing new in the Opposition Brief of the Government is the suggestion, under its Question 2, that the decision of the Court of Claims might be sustained upon the theory that Capital Airlines "voluntarily chose to operate under the Act", had an "option" whether it wished to apply

for a certificate, and that since the compelling of its services was the result of Capital's voluntary request, there was no taking for which just compensation must be paid. We submit that there is nothing in the allegations of the petition, and not one word in the Court of Claims opinion, on which to base this argument.

The case is here upon a demurrer and it is therefore admitted that Capital did not voluntarily elect to go into the air transportation business under the terms of the Act. Capital had been engaged in this business for over ten years when the Act was passed. Its only alternatives were to submit to the terms of the Act or to discontinue its business entirely. Capital's existing contracts for carrying the mail were cancelled without provision for any compensation for such cancellation. Its only alternatives were to carry the mail on the Government's terms and to perform the other required services on behalf of the Government, or to go out of business. The choice offered to Capital was thus a "Hobson's choice" between economic destruction and applying for an operating certificate.

The decisions of this Court establish beyond a doubt that Capital's application for a certificate under such circumstances was made under duress and that the assumption of the obligations of the certificate was not voluntary.

> "It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the *characteristic* of duress properly so called."
>
> Holmes, J., in *Union Pac. R. Co.* v. *Public Service Comm.*, 248 U. S. 67.

Where the taxpayer's only alternatives were "to submit to an illegal exaction or discontinue its business", the payment of the tax was held to be under duress in the case of *Swift & Courtney & Beecher Mfg. Company* v. *U. S.*, 111 U. S. 22.

In the *Union Pacific Case,* 248 U. S. 67, the statutes of Missouri had a general prohibition against the issuance of railroad bonds without a certificate of authority from the Public Service Commission, and imposed severe penalties for such an issue. The Supreme Court of Missouri had held, as the Government argues here, that the application to the Commission for the certificate was voluntary, but this Court revised the holding, saying:

> "on the facts we can have no doubt that the application for a certificate and the acceptance of it were made under duress. *The certificate was a commercial necessity* for the issue of the bonds."

This latter case was cited in *United States* v. *Bethlehem Steel Corporation,* 315 U. S. 289 at 300, as an example of the many in which the individual has been a victim of duress in dealings with government. It typified the helplessness on one side and overpowering strength on the other which is characteristic of duress.

So, in the case at bar, the certificate was a commercial necessity; the application for it and the acceptance of it were made under duress; and the taking of Capital's services and the use of its property under the terms of the certificate were as much within the protection of the Fifth Amendment as if the government requisition had been direct (as in *United States* v. *Russell,* 13 Wall. 623 and page 17 of our main brief) and without the intervention of any application for a certificate.

The petition for a Writ of Certiorari should be granted.

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